

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)	
)	
Applications of AMERITECH CORP.,)	
Transferor,)	
)	
AND)	CC Docket No. 98 -141
)	
SBC Communications Inc..)	
Transferee)	
)	
For Consent to Transfer Control of Corporations)	
Holding Commission Licenses and Lines Pursuant)	
to Sections 214 and 310(d) of the Communications)	
Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of)	
the Commission's rules)	

MEMORANDUM OPINION AND ORDER

Adopted: October 7, 2002

Released: October 8, 2002

By the Chief, Enforcement Bureau:

I INTRODUCTION AND BACKGROUND

1. In this Order, we deny the petition filed by Z-Tel Communications, Inc. to toll the expiration of all of the SBC/Ameritech merger conditions pending the outcome of a broader investigation of the public interest benefits of that merger and of whether the merged company should be allowed to continue business.

2. On September 3, 2002, Z-Tel tiled a petition urging the Commission to review the public interest benefits of the merger and to toll the expiration of all of the merger conditions pending the outcome of such an investigation.¹ In its petition, Z-Tel argues generally that SBC Communications ("SBC") failed to comply with the merger conditions.² In addition, Z-Tel argues that SBC's out-of-region competition commitments failed to deliver the benefits promised by SBC during the merger proceeding.³ Z-Tel requests that, if the Commission's post-tolling review of the merger conditions demonstrates that the merger has not produced the relied-upon public interest benefits, the Commission **require** the divestiture from SBC of the Ameritech companies or revoke the merged ~~firm's~~ authority to be a common carrier. On September 13, 2002, SBC filed an opposition to Z-Tel's petition; Worldcom filed comments supporting Z-Tel's petition that same day.

¹ Z-Tel Petition at 1-3.

² Z-Tel Petition at 10-22

³ *Id.* at 23-26.

3. On October 6, 1999, the Commission approved the transfer of control of licenses and lines from Ameritech Corporation ("Ameritech") to SBC.⁴ During the course of the Commission's review, SBC and Ameritech proposed -- and the Commission adopted **as** conditions of its approval -- a set of voluntary commitments intended to promote the deployment of advanced services, to open SBC's and Ameritech's in-region markets to competition, to foster local competition out-of-territory, to improve residential telephone service, and to ensure continued compliance with the conditions.⁵ The effective period for many of the merger conditions terminates thirty-six months after the Merger Closing Date, *i.e.*, October 8, 2002.⁶ Some of the conditions, however, **are** not subject to that expiration date because the condition itself specifically establishes its own period of applicability.⁷ In addition, the Chief of the Enforcement Bureau may extend a particular condition on the basis of a finding that SBC has failed to comply with that particular condition.⁸

II. DISCUSSION

4. We deny Z-Tel's petition. Paragraph 69 of the Merger Order allows the Commission to extend a particular condition upon a finding of noncompliance with that condition: but Z-Tel has not

⁴ *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63.90, 95, and 101 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 14712 (1999) ("**SBC/Ameritech Merger Order**"), *vacated in part, ASCENT v. FCC*, 235 F.3d 662 (D.C. Cir. 2001).

⁵ See **SBC/Ameritech Merger Order** at Appendix C.

⁶ The merger conditions state that, except where other termination dates are specified or in the event of noncompliance, the merger conditions "shall cease to be effective and shall no longer bind SBC/Ameritech in any respect 36 months after the Merger Closing Date." **SBC/Ameritech Merger Order** at Appendix C, para. 74. In the preamble to Appendix C, the merger conditions define the term "Merger Closing Date" as "the day on which . . . SBC and Ameritech cause a Certificate of Merger to be executed, acknowledged, and filed with the Secretary of State of Delaware." *Id.* at Appendix C. That event took place on October 8, 1999.

⁷ **SBC/Ameritech Merger Order** at Appendix C, para. 74. For example, SBC must continue to comply with the shared unanspon obligations in para. 56 of the conditions. Consistent with para. 359, para. 56 expressly provides its own merger condition sunset, stating that this obligation shall remain in effect unless and until either the Commission were to find in the UNE Remand proceeding that SBC is not required to provide shared transport, or a court were to issue a final non-appealable order to that effect. Neither of those events has occurred, and the condition, therefore, is not set to expire. Other conditions that are effective beyond the general October 8, 2002 expiration date include conditions covering the Carrier-to-Carrier Performance Plan, paras. 23-24; the post-sunset provisions of the separate affiliate requirements, para. 13; OSS enhancements and interfaces developed during collaborative discussions with competitive carriers, paras. 16 and 33; loop qualification information, para. 19; provision of correct promotional discounts to eligible competitive carriers, para. 46(c); availability of unbundled network elements ("UNEs") and combinations of UNEs as were in effect on January 24, 1999, para. 53; completion of efforts to offer telecommunications services outside its current 13-state region, para. 59 (c); refraining from instituting mandatory minimum monthly or flat-rate charges on interLATA calls, para. 60 (b); offering enhanced Lifeline plans to eligible consumers, para. 61; reponing certain service quality data, para. 62; and ensuring compliance with the remaining conditions through an annual independent audit, paras. 65-66.

⁸ *Id.* para. 69, 74; see also *In the Matter of Delegation of Additional Authority to the Enforcement Bureau*, Order, 17 FCC Rcd 4795 (2002), delegating to the Enforcement Bureau certain merger-related audit and compliance duties formerly delegated to the Common Carrier Bureau ("**Delegated Authority Order**").

⁹ **SBC/Ameritech Merger Order** at Appendix C, para. 69. Paragraph 69, as amended by the **Delegated Authority Order**, provides that "If the Chief of the . . . Bureau makes a determination that SBC/Ameritech has during the effective period of a Condition failed to comply with that Condition, the Bureau Chief may, at his or her discretion,

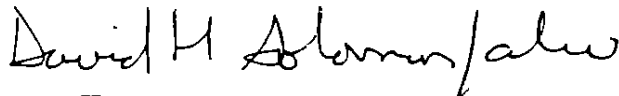
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requested such specific extensions. Z-Tel points to no authority on which the Commission could base the type of wholesale and unilateral extension of the merger conditions that the company seeks in this petition. To the extent Z-Tel seeks relief beyond that available under the Merger Order, it has not provided a sufficient basis for such relief.

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the Petition to Investigate the Public Interest Benefits of the Transfer and to Toll the Expiration of Certain SBC/Ameritech Merger Conditions Pending Investigation, filed by Z-Tel Communications, Inc. **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "David H. Solomon / alw".

David H. Solomon
Chief, Enforcement Bureau

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extend the effective period of that Condition for a period that does not exceed the period during which SBC/Ameritech failed to comply with the Condition.”